

SERVED: August 29, 2000

NTSB Order No. EA-4855

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 25th day of August, 2000

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15261
v.)	
)	
KLAUS MARX,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the written initial decision Administrative Law Judge William A. Pope, II, served in this proceeding on June 3, 1999, following an evidentiary hearing on April 16, 1999.¹ By that decision, the law judge affirmed an order of the Administrator suspending respondent's mechanic certificate for 60 days for his alleged violations of sections

¹A copy of the initial decision is attached.

43.9(a), 43.15(a), and 43.13(a) and (b) of the Federal Aviation Regulations, "FAR," 14 C.F.R. Part 43.² For the reasons

²FAR sections 43.9(a), 43.13(a) and (b), and 43.15(a) provide as follows:

§ 43.9 Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records....

(a) *Maintenance record entries.* Except as provided in paragraphs (b) and (c) of this section, each person who maintains, performs preventive maintenance, rebuilds, or alters an aircraft, airframe, aircraft engine, propeller, appliance, or component part shall make an entry in the maintenance record of that equipment containing the following information....

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

§ 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall--

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets

discussed below, we will deny the appeal.³

The Administrator's May 4, 1998 Order of Suspension, which served as the complaint in this action, alleged, among other things, the following facts and circumstances concerning the respondent:

1. You are now, and at all times hereinafter mentioned were, the holder of Airman Mechanic Certificate No. 206529136 with airframe and powerplant privileges.
2. On or about August 12, 1997, you performed a 100-hour inspection of Civil Aircraft N1682C, a Cessna Model 180-180, determined, and certified that aircraft to be in airworthy condition.
3. At the time of your inspection, you also indicated in the logbook and maintenance records for Civil Aircraft N1682C that you accomplished Airworthiness Directive (AD) 87-20-03 R2, which requires inspection of the seat rails and the set peg for condition and operation.
4. On September 2, 1997, Civil Aircraft N1682C was inspected by Brian Iorg, an Aviation Safety Inspector assigned to the Juneau Flight Standards District Office. At the time of this inspection, the pilot's seat track forward most hole was broken out. The condition of the pilot seat rails was beyond the limits acceptable under AD 87-20-03 R2.
5. As a result of the discrepancies noted in paragraph 4, Civil Aircraft N1682C was unairworthy.
6. The discrepancies noted in paragraph 4 existed at the time of your 100-hour inspection and the aircraft was in an unairworthy condition at the time of your inspection.
7. As a result of the above, you failed to perform the 100-hour inspection in such a manner as to determine whether Civil Aircraft N1682C complied with all applicable airworthiness requirements.
8. On a date known to you, you altered the airframe of Civil Aircraft N1682C by installing a BAS, Inc. tail pull handle.

(..continued)

all applicable airworthiness requirements....

³The Administrator has filed a reply opposing the appeal.

9. Although you performed this major alteration, you did not complete the FAA form 337 certification certifying the alteration was made in accordance with the requirements of Part 43 and you did not approve the aircraft for return to service following the alteration.

The law judge concluded that the Administrator had met her burden of proof with respect to these allegations. Nothing in respondent's one-page appeal brief provides a basis for disturbing that conclusion.

Aside from revealing a general dissatisfaction with the outcome of his hearing and an unexplained belief that the law judge based his decision on "his feelings and emotions," respondent's appeal brief makes no attempt to identify error in any of the law judge's findings or conclusions. In fact, the only substantive objection respondent could be said to have raised reflects a misunderstanding of the law judge's credibility assessment against him and, in certain key regards, in favor of the Administrator's witnesses.⁴

⁴Respondent also suggests that the law judge may have been biased in favor of the counsel for the Administrator, for whom, the respondent suspects, the law judge has "personal feelings." This is so, according to respondent, because an investigation (of unspecified magnitude) he conducted established that this counsel prevails in hearings before this law judge "most all of the time[]...." Although he allows that this may be the product of counsel's abilities, he "insists" that he be given a new hearing before a law judge unfamiliar with this counsel's "gift." In the first place, since this appears to have been the first case this attorney litigated before Law Judge Pope, respondent has already had a hearing before a law judge not previously aware of this counsel's talents. In the second place, scurrilous accusations against law judges by losing parties are not entitled to serious consideration where, as here, the claim is made with respect to a decision that rests on a reasonable analysis of the evidence of record. Moreover, we do not believe that an attorney's track record before a law judge is sufficient to support the kind of inference respondent would have us draw.

Specifically, respondent suggests that the law judge erred when he found him "not credible," since respondent has extensive experience in inspecting aircraft as a certificated mechanic. The law judge, however, was not referring to respondent's knowledge or competence as an aircraft mechanic. Rather, he was indicating that he did not believe respondent's testimony in various respects concerning the adequacy of his inspection of Civil Aircraft N1682C and the reasons why he had not completed the Form 337.

Finally, respondent asserts, as a basis for appealing, that a suspension will adversely affect him economically and negatively impact his customers. Such factors, however, are not relevant in cases in which the sanction sought by the Administrator is within the range typically imposed for the violations found proved.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 60-day suspension of respondent's airman mechanic certificate(s) shall begin 30 days after the service date indicated on this opinion and order.⁵

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY, Members of the Board, concurred in the above opinion and order.

(..continued)

⁵For the purpose of this order, respondent must physically surrender his certificate(s) to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).